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ABSTRACT

The Indian Education Legal Support Project focuses on the legal rights of tribes to control the formal education of tribal members in all types of schools--federal, state, and tribal. Few tribes have tribal education laws, yet such laws are essential to defining each tribe's education rights and goals, and to delineating the forum and process for establishing government-to-government relationships and working agreements on common educational issues and goals. The project seeks to assist tribal governments in assessing their education situation; developing tribal education goals, laws, and standards; and influencing federal and state educational policies and legislation. This document contains the following materials for use in presentations and workshops: (1) project goals; (2) selected facts about Indian education; (3) tribal rights under selected federal Indian education laws; (4) "top 10" questions about tribal rights and responsibilities in education; (5) tribal self-assessment questions concerning tribal educational history, current situation, goals, capabilities, resources, and relationships with the state and public school districts; (6) self-assessment questions for state and federal agencies involved in Indian education; and (7) examples of Indian education problems and tribal government solutions. (SV)

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"Tribalizing Indian Education"

Presentation/Workshop Materials

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INDIAN EDUCATION LEGAL SUPPORT PROJECT

"Tribalizing Indian Education"

Presentation/Workshop Materials

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INTRODUCTION

These presentation/workshop materials are intended for general use by tribal, state, and federal officials, schools, and other interested persons. The materials are divided into sections. Some of the sections discuss the Native American Rights Fund's Indian Education Legal Support Project. Some of the sections provide an overall picture and perspective of Indian tribes and Indian education today. Some of the sections will help focus on specific issues and choices for tribes for the education of Native Americans tomorrow.

The Native American Rights Fund's Indian Education Legal Support Project, *"Tribalizing Indian Education,"* is supported by a grant from the Carnegie Corporation of New York. The Carnegie Corporation, however, does not take responsibility for any statements or views expressed herein.

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INDIAN EDUCATION LEGAL SUPPORT PROJECT

Presentation/Workshop Materials

TABLE OF CONTENTS

		Page
Section 1:	Executive Summary of The Project	1
Section 2:	Goals of the Project - Tribalizing Indian Education	3
Section 3:	Selected Facts About Indian Education	5
Section 4:	Tribal Rights Under Selected Federal Indian Education Laws	9
Section 5:	"Top Ten" Questions About Tribal Rights and Responsibilities in Education	13
Section 6:	Tribal Self-Assessment Questions - Tribal Roles and Options in Education	19
Section 7:	State and Federal Self-Assessment Questions	25
Section 8:	Indian Education Problems and Tribal Government Solutions - Examples	31

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INDIAN EDUCATION LEGAL SUPPORT PROJECT

EXECUTIVE SUMMARY

The Native American Rights Fund

The Native American Rights Fund (NARF) is the national legal defense fund for American Indian tribes and Alaska Natives. Founded in 1970, NARF concentrates on bringing cases and reforming laws that are of major importance to a great many Native people. NARF consistently has been at the forefront of issues and developments in Indian law in areas such as Indian treaty rights to land and water, Native religious freedom rights, and the rights of tribes as sovereign governments including tribal rights in education.

The NARF Indian Education Legal Support Project - Tribalizing Indian Education

NARF historically has represented Indian clients on a variety of education issues. Most recently, NARF has represented the Rosebud Sioux Tribe of South Dakota in establishing a precedent-setting tribal education code and implementing that code through a tribal education department. As a result of its success with the Rosebud Sioux Tribe, NARF has started a new project that is funded by the Carnegie Corporation of New York. The project will advance Native American rights in education by emphasizing the legal rights of tribes to control the formal education of tribal members in all types of schools -- federal, state, and tribal.

NARF will seek to "tribalize" formal education through developing tribal education laws and reforming state and national Indian education legislation. Tribal education laws are essential to effective tribal control of education, yet few tribes have such laws. Tribal laws are essential to defining each tribe's education rights and goals. Tribal laws are essential to delineating the forum and process for establishing tribal and non-tribal government-to-government relationships and working agreements on common education issues and goals.

The Need is Evident but Affirmative Steps Must Be Taken

Indian tribes are sovereign governments just as are their state and federal counterparts. Many federal reports and some federal and state laws have focused on Indian education problems. Some reports and laws have pointed out the need to increase the role of tribal governments to address the problems. But instead of requiring active tribal government involvement, most federal and state education programs and processes circumvent tribal governments and maintain non-Indian federal and state government control over the intent, goals, approaches, funding, staffing, and curriculum for Indian education. And there are no effective programs to establish tribal education codes or operate tribal education departments.

The three sovereign governments in this country have a major stake in Indian education. Common sense dictates that tribal governments have the most interest because it is their children at stake, their most precious resource, and their future for perpetuating the tribe. Some progress has been made because of Indian education programs, Indian parent committees, Indian school boards, and tribally-controlled colleges. Some progress has been made through a measured amount of tribal control and input under laws that include the Indian Education Act of 1988, the Indian Self-Determination and Education Assistance Act of 1975, the Elementary and Secondary Act of 1965, and the Impact Aid Laws of 1950.

Conclusion

Yet more direct tribal control is needed, and more direct control is the next logical step for many tribes. Federal reports and recommendations call for partnerships between tribes and state schools, tribal approval of state education plans, and tribal education codes, plans, and standards. Tribal control of education is a fact of life in a small number of tribes and more tribal communities want to assume this control. But tribes have been denied this opportunity and responsibility and have been "out of the loop" for decision-making and accountability. For Indian education to succeed, federal and state governments must allow tribes the chance to regain control and make decisions, be accountable, and help shape their children's future and their own future as tribes. NARF intends to ensure that tribes gain the legal control over education that they deserve as sovereign governments and that they must have for Indian education success.

NOTES

GOALS OF THE PROJECT - TRIBALIZING INDIAN EDUCATION

1. To promote sovereign tribal rights and responsibilities in education and increase the government-to-government interactions between the tribal, state, and federal governments;

2. To increase the number of tribal governments that assess their education situation, develop education goals, and exercise sovereign rights through developing and implementing tribal education laws, tribal education standards, and tribal education plans;

3. To increase the number of tribal governments that take more education responsibility, control, and accountability;

4. To assist the federal and state governments in increasing their government-to-government education work with tribal governments and in monitoring that increase within their federal and state agencies and federal and state funded education programs; and,

5. To assist tribes in reforming federal and state Indian education laws and policies and in passing new laws and adopting new policies which enable tribal decision-making, direct funding, block grant funding, set-asides, and other improvements in Indian education.

NOTES

SELECTED FACTS ABOUT INDIAN EDUCATION

Introduction

The information below was derived from the following sources:

1. U.S. Department of the Interior, Office of Indian Education Programs, *"Fingertip Facts"* 1993;

2. National Advisory Council on Indian Education, "*Indian Education: A Federal Entitlement, 19th Annual Report to Congress*" FY 1992;

3. National Advisory Council on Indian Education, "*Indian Education: Whose Responsibility?, 18th Annual Report to Congress*" FY 1991;

4. U.S. Department of Education Indian Nations at Risk Task Force, "*Indian Nations at Risk: An Educational Strategy for Action*" 1991; and,

5. White House Conference on Indian Education, "*The Final Report of the White House Conference on Indian Education - Executive Summary*" 1992.

Facts

1. In 1989, the nationwide high school drop out rate for American Indian and Alaska Native students was 36%. This was more than twice the 15% drop out rate for white students and greater than the 28% drop out rate for Hispanic students and the 22% drop out rate for African American students.

2. In 1988, thirty-two percent (32%) of all American Indian and Alaska Native eighth grade students performed at below what the United States Department of Education considers to be "basic" academic levels in math. This was double the rate of white eighth graders (16%) who performed below the basic levels in math and greater than the rate of Hispanic eighth grade students (28%) and African American eighth graders (29%). That same year only five percent (5%) of all American Indian and Alaska Native eighth grade students performed at an advanced level in math, which was the smallest percentage of all ethnic groups.

3. There are about 1.9 million American Indians and Alaska Natives in the United States. Using 1991 totals, there were 398,484 American Indian and Alaska Native elementary and secondary school age (grades K-12) children.

4. In 1991, there were 347,291 American Indian and Alaska Native children (about 87% of 398,484) attending state public schools. These children totaled .98% of the 46.8 million students in state public schools throughout the nation.

5. In 1993, Indian tribes and tribal organizations operated 88 elementary and secondary schools under contracts with or grants from the Bureau of Indian Affairs. These schools served about 16,500 American Indian and Alaska Native students.

6. In 1993, the Bureau of Indian Affairs operated 96 elementary and secondary schools which served about 27,000 American Indian and Alaska Native students.

7. In 1991, there were 10,352 American Indian and Alaska Native elementary and secondary school age children attending private schools.

8. In American Indian and Alaska Native communities, youth make up the largest and the fastest growing segment of the population. The 1990 census showed that the age range between birth and 9 years is the largest segment of the American Indian and Alaska Native population. Enrollment of American Indians and Alaska Natives in the nation's state public schools is expected to increase 29% between 1985 and 1995.

9. Overall post-secondary enrollment among American Indians and Alaska Natives increased by 11% from 93,000 in 1980 to 103,000 in 1990. These students constituted .8% of the total post-secondary enrollment in the nation. Nearly 90% of American Indian and Alaska Native post-secondary students attended public institutions in 1990. In 1991, tribal college enrollment accounted for about 14% of all American Indian and Alaska Native post-secondary students.

10. Total federal funding for American Indian and Alaska Native education is over one billion dollars. This is the federal total in all types of schools at all levels of education.

11. Impact Aid funding makes up 25% of the federal American Indian and Alaska Native education funding total. State public school districts receive over $260 million in annual Impact Aid appropriations. State public school districts receive these funds based on the American Indian and Alaska Native student populations they serve in Indian country, which is about 125,000 students.

Other Excerpts from the Source Reports

1. "American Indian tribes and Alaska Native communities are nations at risk [because] our schools have failed to nurture the intellectual development and academic performance of many Native children, as is evident from their high dropout rates and negative attitudes toward school." *Indian Nations at Risk* at 1.

2. The federal government should "promote legislation that will require public and Bureau of Indian Affairs schools to include the participation of tribes, Native communities, and parents of Native children in the development, implementation, and evaluation of local, state, and federal plans." *Indian Nations at Risk* at 28.

   The federal government should also "require tribal approval of local and state plans as a condition of approval by the U.S. Department of Education for limiting rules, regulations, and requirements of federal education programs serving Native children and adults." *Id.*

3. "Congress must continue to support the authority of Native governments to control Native education...And, Congress must provide the financial resources to achieve these goals...And finally, Congress must provide Native governments with the legislative tools to achieve these goals." Kickingbird and Charleston, *"Responsibilities and Roles of Governments and Native People in the Education of American Indians and Alaska Natives" reprinted in NACIE 19th Annual Report* at 166.

4. "One major theme that was articulated was the premise that tribal control and leadership in education was critical in the strengthening of services....There is additional weight behind this demand given the inability of society to accurately perceive the cultural aspects integral to the values and goals of Indian communities." *Executive Summary, Final Report of the White House Conference on Indian Education* at 47.

5. "Therefore, be it resolved, that Federal legislation be enacted to authorize all tribes that have developed the capabilities to exercise tribal authority over all Federal education functions, programs, and services on their respective reservations and in Indian communities. The legislation shall provide adequate fiscal support, in accordance with P.L. 100-297, to develop, implement, and maintain tribal departments of education.

   Also, that tribes have the prerogative and option, in accordance with their sovereignty, codes, and plans, to receive all Federal funds generated within the respective tribal jurisdictions and territories. This authority would allow for the development of a planning process whereas tribal members would be consulted to develop codes and standards which reflect the cultural values of the respective tribes" *Executive Summary, Final Report of the White House Conference on Indian Education* at 13.

NOTES

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INDIAN EDUCATION LEGAL SUPPORT PROJECT

Presentation/Workshop Materials

TRIBAL RIGHTS UNDER SELECTED FEDERAL INDIAN EDUCATION LAWS

Introduction

Federal Indian education laws create programs and authorize or require actions that directly affect tribes and Indian students. Federally recognized tribal governments are directly eligible for certain programs. Recognized tribal governments or groups of Indian participants are to review applications or be involved in operations for other programs.

Each of the following laws created education programs that directly serve Indian students, either through tribes or through state public schools. While this is not a complete list of all education laws that affect Indian students, these are the major laws that tribes will encounter on the road to greater responsibility in education. We have also given some ideas about how tribes could increase their education roles and responsibilities. This work could be done through tribal education departments. This increase could be facilitated if the federal laws were amended.

Laws

1. The Johnson O'Malley Act of 1934, as amended. Provides federal funding for formula-based supplemental education programs to tribes and state public schools for the special educational needs of Indian students. Requires local Indian education committees to review applications and be involved in operations. Tribes receive preference when applying for JOM funding through the Bureau of Indian Affairs. Tribal Education Departments could administer JOM funds with other supplemental and categorical funds to provide more coordination and focus on education issues.

2. The Impact Aid Laws of 1950, Public Laws 81-874 and 81-815, as amended. Provide federal subsidies to state public school districts to construct facilities ('815) and educate children residing on federal lands including Indian country ('874). Amendments were passed in 1978 based on the government-to-government relationship between the United States and Indian tribes. These amendments require school districts to have policies and procedures which ensure that Indian parents and tribes have an opportunity to comment on the funding application process and are consulted in the development of school programs. Indian tribes may also file complaints with the Secretary of Education against school districts for violation of Impact Aid policies and procedures. If Impact Aid funds went through the tribes, tribes would have more responsibility for program operation and results.

3. The Elementary and Secondary Education Act of 1965, Public Law 89-10, as amended. Provides supplemental federal funding for a variety of education programs including those that are known today as Chapter 1 and Bilingual Education. Both Chapter 1 and Bilingual Education funding may be provided to state public schools, Bureau of Indian Affairs schools, and to tribal contract or grant schools.

   Chapter 1 formula-based funding provides supplemental educational services and programs, usually to develop basic academic skills, for disadvantaged youth including Native Americans. Bilingual Education competitive, discretionary funding provides supplemental bilingual education services and programs for limited English proficient youth including Native Americans. Both programs have a parent advisory committee requirement to provide schools with advice in the planning, implementation, and evaluation of their programs and services. This requirement may be waived and the elected school board may serve as a PAC in tribal contract and grant schools.

   If Chapter 1 and Bilingual Education funds were administered through tribal education departments, the tribe could assist in providing more coordination and focus on education issues.

4. The Head Start Program Act of 1965, as amended. Provides formula-based federal funding for comprehensive health, educational, nutritional, social, and other services to economically disadvantaged preschool children including children on federally recognized Indian reservations. Federally recognized Indian tribes may directly receive Head Start funding and operate Head Start programs for Indian children on their reservations. If the tribal education department administered Head Start funds, there could be better coordination and transition from preschool into elementary school with fewer political complications.

5. The Indian Elementary and Secondary School Assistance Act of 1972, Public Law 92-318, as amended. Provides formula-based federal funding for supplemental programs known as Title V. These programs are designed to meet the special educational or culturally related academic needs of Indian students. Title V formula funds may be provided to state public schools, Bureau of Indian Affairs schools, and tribal contract and grant schools. Indian parent advisory committees must approve Title V programs and be involved in program administration in the state public schools.

   This Act also made tribes eligible for certain competitive, discretionary grants for elementary and secondary school demonstration and pilot projects, special teacher training programs, Indian controlled schools projects, and adult education programs. Tribes could administer Title V funds with other supplemental and categorical funds to provide more coordination and focus on education issues.

6. The Indian Self-Determination and Education Assistance Act of 1975, Public Law 93-638, as amended. Allows Indian tribes to contract for the operation of schools that were formerly operated by the Bureau of Indian Affairs or that were funded by the BIA and privately operated. Authorizes direct funding to tribal schools for programs and operations that are regulated under the Education Amendments of 1978, Public Law 95-561. Tribal education departments could work with contract and grant schools to coordinate tribal education standards, implement tribal education policies, and promote education goals that perpetuate the tribe.

7. The Education Amendments of 1978, Public Law 95-561, as amended. Provides broad statutory guidance to schools that are operated or funded by the Bureau of Indian Affairs. Provides for Indian school boards in BIA operated schools. Requires the BIA to actively consult with tribes in all matters that relate to Bureau schools. Allows the Secretary of the Interior to implement cooperative agreements between tribes, school boards of Bureau schools, and state public school districts. Establishes formula-based funding for all BIA operated schools and BIA funded tribal schools. Requires that such schools be accredited or meet standards that are equal to or exceed those accreditation requirements. Allows tribes to set academic standards for BIA operated or funded schools that take into account the specific needs of Indian children. Tribal education departments could assist BIA operated or funded schools in lobbying for or obtaining the resources needed to implement the 95-561 requirements.

8. The Tribally Controlled Community College Assistance Act of 1978, Public Law 98-192, as amended. Provides federal funding for post-secondary institutions controlled by Indian tribes. Tribal governments now operate 24 tribally controlled colleges. Two of these colleges are four-year institutions. Tribal education departments could assist tribal colleges in trying to gain needed resources, and tribal education departments could gain assistance from tribal colleges in solving Indian education problems.

9. The Indian Education Act of 1988, Public Law 100-297, as amended. Allows tribes to operate BIA funded schools as grant schools rather than as contract schools. Grant school funding allows tribal schools to receive funding on a more timely basis, to invest those funds under certain restrictions, and to use the interest gained for further educational costs in their schools.

   This Act also authorizes federal funding for tribal early childhood programs and tribal departments of education. To date no money has been appropriated for tribal departments of education. Tribal education departments could be funded through this law when appropriations match authorizations.

10. The Carl D. Perkins Vocational and Applied Technology Education Act of 1990, Public Law 101-392. Provides funding for competitive, discretionary project grants that will provide vocational education opportunities for Indians. Allows tribes and tribal organizations to plan, conduct, and administer vocational education programs that will provide Indian students with skills related to jobs or further post-secondary training. Also allows tribal post-secondary institutions to compete for post-secondary vocational education grants. Tribal education departments could assist vocational education programs and post-secondary institutions in focusing their training on employment areas relevant to the tribe.

11. The Native American Languages Act of 1990, Public Law 101-477. Recognizes the right of Indian tribes to use their native languages to conduct tribal business and as a medium of instruction in all Bureau of Indian Affairs funded schools. Directs federal agencies to consult with tribes in evaluating the agencies' policies and procedures and bringing these in compliance with the Act. Tribal education departments could assist BIA funded schools and tribal councils in making the transition into greater use of the tribal language with the resulting increase in student cultural awareness and self-esteem.

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Presentation/Workshop Materials

"TOP TEN" QUESTIONS ABOUT TRIBAL RIGHTS AND RESPONSIBILITIES IN EDUCATION

Introduction

Tribal, federal, and state governments are all sovereigns and all have education rights and responsibilities. But the federal and state governments are far too removed from the focal point of Indian education, Indian students' performance. Federal and state governments have a lower interest and lower stake in Indian student performance; their futures are not linked to the Indian children's. It is time to give Indian education authority to those tribal governments that seek the responsibility. It is time to empower the governments that are closest to the children, to the governments that have the largest stake in the problems and the solutions.

The time is right for tribal control of Indian education. Tribal governments recognize their responsibilities. Tribal governments seek ways to increase their legal and structural capabilities. Education holds the future for tribes and tribes have the biggest stake in their children's education. Yet some officials and educators still seek the status quo and question tribal control. Following are some of those questions with reasons that show why tribes must be given the responsibility.

"Top Ten" Questions

1. What are the legal rights and responsibilities that Indian tribes have now regarding formal education?

Under current federal law, tribes can control tribal schools and some aspects of federal schools. But 87% of all Indian elementary and secondary students (almost 350,000 children) go to state public schools even on reservations. Under current federal law, tribes have poorly defined rights with state public schools. Tribes may have some input, but tribes have no final decision-making authority.

Even without current federal rights, tribes feel a major responsibility for their children's education. Tribes know that their children are their future. As sovereign governments, tribes have a special responsibility to perpetuate their cultures, their resources, and their lands. Tribal children must have the best education possible to prepare for their own future and to ensure each tribe a future as a people.

2. ***What education rights and responsibilities do tribes want? Why?***

Many reports and statistics show that the state and federal governments have failed miserably in Indian education. Tribes want to improve Indian student performance. Tribes want to make formal education relevant to the needs of their children and their tribal communities.

Tribes want more decision-making options, more alternatives. Tribes want to make the decisions on how education resources will be focused such as in education goals, curriculum, teaching methods, funding, staffing, or in higher education. Tribes are sovereign governments just like their state and federal counterparts. Tribes have the sovereign responsibility to control the education of their citizens, just as do the states and the federal government. And of the three sovereign governments, common sense tells that tribes have the most interest in the education success of Indian children.

3. ***What can tribes do to gain these rights and take on these responsibilities?***

Tribes can overcome centuries of outside control of education by exerting leadership as sovereign governments. Tribes can plan and set goals in education. Tribes can make education a priority by devoting financial, human, and technical resources to education. Tribes can develop their education policies, laws, and infrastructure through tribal departments of education.

With resources, laws, and infrastructure tribes will have many options. Tribes will be able to implement their plans and goals. Tribes will be able to monitor and report on the education performance of their members at all levels. Tribes will be able to oversee the development of relevant and effective education programs and to provide technical assistance to schools, teachers, and parents.

Tribes will be able to coordinate and focus tribal and non-tribal resources on education matters on their reservations and in their communities. Tribes will be able to communicate with reservation and non-reservation entities and to develop working agreements with outside governments on common education issues and goals. Tribes will be able to integrate their unique histories, traditions, and values into the formal education processes of all education providers.

4. ***Why aren't the same results accomplished by Indian school boards, Indians serving on the state public school boards, and Indian parent committees?***

Indian school boards may not have the political or financial capabilities to deal with all of the education issues on all levels within a reservation. Their authority is often limited to their students and staff. That leaves out other tribal schools and resources as well as non-tribal ones.

State public school boards are political entities of the state. Thus, state government has the ultimate authority over public school policies, curriculum, staffing, and funding. These structures give board members and parent committees little, if any, effective clout with the school districts or with the state and federal governments on these matters.

State and federal governments have Departments of Education and education officials. State and federal governments want to use these structures to deal with tribes on a government-to-government basis on the same level. Tribes must have the resources and capabilities to make political decisions, develop legal codes and governmental infrastructure, and take legal action that simply cannot be taken by school boards or parent committees.

But won't someone ask, isn't tribal control just adding another layer of bureaucracy?

No. Tribal governments are inherently closer to their people than are the state and federal governments. They are closer to the children and the families. Tribal governments are inherently better advocates for Indian students and parents than are the state and federal governments. And like other local governments, tribes dislike bureaucracy and are more service-oriented. Like other local governments, tribes are more accountable and more readily available than larger, more distant governments.

5. ***Does this mean that tribal governments will be running all their local schools and education programs?***

No, not unless the tribe makes that decision. Tribal government control does not eliminate input from or decision-making by school boards and parent committees. Tribal governments can set the education goals, policies, curriculum, and standards for the reservation through legal action. And this will leave plenty of decisions and functions for the school boards and parent committees.

6. ***What kind of financial, human, and technical resources do tribes have to accomplish their education goals? Is it realistic to think tribes can accomplish their goals with limited resources?***

Yes, potentially tribes do have the resources to accomplish their education goals. Under tribal government direction, experts on and near reservations and Native communities from all education levels could coordinate their knowledge and work on meeting Indian children's educational needs and accomplishing tribal education goals. Under tribal government direction, there are potentially a large number of federal and state education resources that could be focused and coordinated on specific Indian education programs and matters. Indeed, if the federal resources were provided to tribes as a self-governance type block grant, tribal governments could provide even better prioritizing and focus.

But under current federal law, there is no direct funding for tribal education departments and no authority for federal education funding to be administered as block grants through tribes. From most reservations and Native communities, tribal governments could access human and technical resources to address education problems from preschool through college. From almost all reservations and Native communities, tribal governments will be unable to address fully their children's education problems without federal recognition of tribal authority and federal funding.

7. ***Is there a model for tribes to use in tribal education law development and reform?***

Yes, the Rosebud Sioux Tribal Education Code, enacted in 1991, is a useful model. This Code was developed and enacted after the Tribe went through an extensive self-assessment of where it was and where it wanted to be in education. The Code establishes a tribal education department. It regulates all schools on the reservation including the state public schools. It establishes guidelines and regulations in curriculum and education standards, staffing, alcohol and drug abuse education, and parental and community involvement.

Since enactment of the Code, the Rosebud Sioux Tribe has reached an agreement with the state public school district on its reservation regarding Impact Aid funding. The school district and the Tribe are equal partners in the Impact Aid funding application process and expenditure planning. And the district and the Tribe work jointly to monitor and improve student performance. With federal law changes and further tribal / state cooperation, this model could be extended to other reservations and Indian communities.

8. ***What about small tribes, tribes with few members in any one state public school district, tribes with a small land base, or urban Indians? What are their options for improving Indian education under tribal authority?***

These groups still have options. Small tribes could review and model the process for establishing an Education Code and the main points that are in other tribes' codes. Small tribes and urban Indians could focus their efforts on one area of education such as curriculum materials, training tribal members to be teachers, or reaching agreements with non-tribal governments on Impact Aid funding or school programs. Or small tribes and urban Indians could join forces to advocate for reform of specific state or national education laws and policies.

Tribes with few members in any one state public school district, tribes with a small land base, and urban Indians might want to focus on education reform rather than on developing tribal laws and infrastructure. These groups may want to work through existing education programs and entities such as Johnson O'Malley, Title V, and Chapter 1 education programs.

9. ***What can the federal government do to help tribes improve Indian education?***

Enact legislation that confirms and actively supports direct tribal control over all education systems that serve Indian children -- tribal, federal, and state. Direct all federal agencies and states to acknowledge the primacy of tribes in the education of tribal members in the same way this primacy is recognized in the Indian Child Welfare Act of 1978.

Appropriate funding under the Indian Education Act of 1988 for tribal education departments. The Act authorizes such funding but to date no money has ever been appropriated. Authorize tribal education block grants that consolidate existing federal education funding for programs that serve tribal members (for example, Impact Aid, Head Start, Child Development, Chapter 1, Johnson O'Malley, Title V, Bilingual Education, Vocational Education, Adult Education, Adult Vocational Training, and Higher Education Scholarships), so tribes can set their education priorities for themselves.

Allow tribes to have meaningful input and final decision-making authority in Indian education, perhaps through a verified eligibility process. At a minimum, treat tribes as equals to states in federal education legislation that affects tribal members.

10. ***What can the states do to help tribes improve Indian education?***

Recognize the rights of tribes as sovereigns in education and direct agencies and public school districts accordingly. Actively seek out tribal contributions to education reform and improvement. Be open to tribes that wish to take responsibility for the education of their members. Waive restrictions that shut tribes out of formal procedures such as funding, staffing, curriculum, certification, and accreditation. Enter into working agreements with tribes on common education goals, issues, and processes. Go beyond allowing tribes to have input and allow tribes to be equal partners or even final decision makers in Indian education.

NOTES

TRIBAL SELF-ASSESSMENT QUESTIONS - TRIBAL ROLES AND OPTIONS IN EDUCATION

Introduction

Tribal control of education will require tribal governments that want and that are prepared for the responsibility. Potentially, tribal governments can do things that the federal and state governments are not set up to do. For examples, tribal governments can set up tracking systems to monitor performance of all tribal students; tribal governments can coordinate all their laws and programs to deal with problems like poor attendance or truancy; tribal codes can coordinate existing resources, knowledge, and skills at all education levels--preschool, elementary, secondary, and post-secondary. To make this potential real, a tribe must assess its readiness and prepare for the future.

Following are a number of areas that are important to tribal control of education. These are areas that the Native American Rights Fund has identified through its development work on tribal education codes, with tribal education departments, with tribal councils, with states, with state public school districts, with federal agencies, and with national Indian organizations. These are areas that are important to the tribe's readiness and capability to identify tribal education goals, enact laws toward those goals, and to successful enforcement of the laws and accountability for tribal education rights and responsibilities. Review this checklist to determine your tribe's readiness now and to think about where it could be going in tribal control of education.

Self-Assessment Questions

1. **History**

   a. What is the history of the tribe, both before and after contact with non-Indians, regarding education?

   b. What have been the education successes of the tribe and who have been the leaders?

   c. What has been the tribe's experience or involvement with non-Indian religious, federal, state, and private schools?

   d. What are the tribe's traditions and values that affect education?

e. How have families, elders, and communities been involved in education, both in the past and now?

2. **Types of Education Programs On/Near Your Reservation or Native Community**

a. What types of schools or education programs serve tribal members today (pre-school to post-secondary to adult education)?

b. Are these schools and programs tribal, federal, state, private, or religious?

c. What are the sources of funding for these schools? For examples, federal, state, tribal, private, or religious.

d. Where are these schools and programs located?

e. Do tribal members serve in these schools and programs as school board members, administrators, teachers, counselors, etc.?

3. **Certification and Accreditation**

a. Who certifies the teachers and other professionals at the schools and education programs serving tribal members?

b. How are the schools and education programs accredited?

4. **Support and Coordinating Programs**

a. What other programs and agencies are controlled or supported by the tribe that might affect education or interact with tribal children? For examples, social services programs, job training programs for youth, community programs, law enforcement, tribal courts, after-school recreation or sports, church groups.

b. If the tribe does not control these programs or agencies, what is the interaction between the programs or agencies and the tribe?

5. **Tribal Education Goals** What are the tribe's education issues, needs, and goals today?

a. Issues and needs -

b. Goals -

6. **Tribal Government's Functions and Capabilities**

   a. Does the tribe have a recognized functioning government with law-making and law implementation capabilities?

   b. How is the government organized? For example, is there a tribal council that meets regularly? A tribal court?

   c. Does the tribe have written laws (constitutional, legislative, and judicial)?

7. **Tribal Government and Education**

   a. Does the tribal council have an education committee?

   b. Does the tribal council receive education reports, reports on how well tribal members do in all levels or education?

   c. Is there a tribal education department? An education director?

   d. Does the tribe have an education code? Does the tribe have any education plans or policy statements?

   e. How does the education committee, the education department, or the education director relate to schools and other existing education entities on the reservation or in the Native community?

8. **Tribal Resources**

   a. What are the tribe's resources -- financial, human, and technical -- that are available for education improvement? For examples, tribal council budgets for scholarships or other education programs, committees or networks for education, tribal college or other post-secondary institution that assists the tribe with education programs.

   b. Who will lead the tribe in its education reform efforts?

   c. Does the tribe or do tribal members have any experience in reservation networking and coordinating on specific issues? For examples, setting up hearings or meetings to review specific reservation or community problems, bringing the community input to the tribal council, using the input as information for council use in decisions, resolutions, or codes.

   d. Does the tribe have an independent, non-federal, source(s) of income?

e. What are the tribe's priorities for its non-federal income?

f. Is education one of these priorities?

9. **Indian Education in Your State**

a. Does the state have an Indian education office, program, commission, or council?

b. Are there any specific state laws, policies, or programs regarding Indian education?

c. What has been the tribe's experience with providing input into the state laws, policies, or programs that affect Indian education?

d. Does the state publish regular eduction reports and do any of these reports include Indian education issues or Indian student performance?

10. **Indian Education in Your State Public School Districts**

a. How many state public school districts serve your tribe?

b. Are these school districts located wholly or partly within your reservation or Native community?

c. What percent of the school district(s)' student enrollment is from your tribe?

d. What regular interaction does your tribe have now with the school district(s)? For examples, participate in holiday programs or extra-curricular activities, meet with district officials on education issues, organize voting campaigns to elect tribal members to school boards, review and sign off on the Impact Aid application, coordinate with the home/school liaison staff, provide for elders or artists or other tribal members to help in classes.

e. What school policies and programs focus on Indian students or on Indian education issues (positive or negative)?

f. Does the school district(s) publish regular education reports and do any of these reports include Indian education issues or Indian student performance?

g. If there is little interaction between the tribe and the district(s), what are the main reasons that there is little coordination?

11. **Coordinating with Other Tribes on Education**

a. Are there other tribes in your area or region with whom you would like to work to improve education on your reservation or in your Native community?

b. Would your tribe be interested in participating in a national coalition of tribes advocating for reform of tribal rights and responsibilities in federal Indian education law and policy?

c. Do you think that this type of coalition should be a new organization or should be part of existing groups like the National Indian Education Association or the National Congress of American Indians?

NOTES

STATE AND FEDERAL SELF-ASSESSMENT QUESTIONS

Introduction

Tribes, states, and the federal government have certain mutual goals in Indian education - each want Indian students to stay in school, each want Indian students to improve their academic performance, each want Indian students to enter post-secondary education, each want Indian students to succeed. The federal and state governments have exercised their decision-making authority and control over Indian education for years, and no one is satisfied with the results. The federal and state governments can now assist tribal governments to take their rightful role and responsibility in Indian education.

Tribal control of education will require tribal governments that want and that are prepared for the responsibility. The federal and state governments can assist tribal governments to realize their potential and take Indian education responsibility. Tribal governmental structures generally are smaller than their state and federal counterparts and generally control a larger variety of programs, (*e.g.*, law enforcement, tribal courts, social services, education, housing, etc.). Potentially, this allows tribal governments to do things that the state and federal governments are not set up to do. For examples, tribal governments can set up tracking systems to monitor performance of all tribal students, tribal governments can coordinate all their laws and programs to deal with problems like poor attendance or truancy, tribal codes can coordinate existing knowledge/skill criteria at all education levels - pre-school, elementary, secondary, and post-secondary. To make this potential real, tribes must take steps that need federal and state support.

Following are a number of areas that are important to tribal control of Indian education. These are areas that the Native American Rights Fund has identified through its development work on tribal education codes, with tribal education departments, with tribal councils, with states, with public school districts, and with federal agencies and officials. Federal and state government officials and staff can review these areas to determine their own agencies' knowledge of and readiness to work with tribal governments as tribes prepare for exercising education rights and responsibilities.

State and Federal Self-Assessment Questions

1. **History**

   a. What are the histories of the tribes that you will work with and how are those histories treated in the state public school texts and curricula or in federally funded education programs?

   b. What are the tribes' traditions and values that are reflected or covered in state or federally funded schools and education programs?

   c. What have been the tribes' experiences or involvement with non-Indian religious, federal, state, and private schools?

   d. How have tribal leaders, elders, and educators been involved in your agency's education decisions or programs, now or in the past?

2. **Types of Education Programs On or Near the Reservations and in Native Communities**

   a. What types of federal or state funded schools or education programs serve tribal members today (pre-school to post-secondary to adult education)?

   b. Where are these schools and education programs located?

   c. Do tribal members serve in these schools and programs as school board members, administrators, teachers, counselors, etc.?

3. **Certification and Accreditation**

   a. Who certifies the teachers and other professionals at the schools and education programs that serve tribal members on or near the reservations and in Native communities?

   b. How are the schools and education programs accredited? In what ways do these accreditation standards reflect tribal input and values?

4. **Support and Coordinating Programs**

   a. What are the other state and federally funded programs and agencies that might affect Indian education or that interact with tribal children? For examples, social services programs, job training programs for youth, law enforcement, state or local courts, state athletic associations.

b. If the tribes do not control these programs or agencies, what is the interaction between the programs or agencies and the tribes and how are the tribes involved in planning, decision-making, operations, and evaluations?

5. **Tribal Education Goals**

What are the tribes' education issues, needs, and goals today?

6. **Tribal Government Functions and Capabilities**

a. Do the tribes that you work with have recognized and functioning governments with law-making and law implementation capabilities?

b. How are the tribal governments organized? For example, are there tribal councils that regularly meet? Tribal courts? Do the tribes have written laws?

7. **Tribal Government and Education**

a. What methods has your agency used to approach tribal governments on common education issues, goals, and processes? Have these methods been effective and how has that effectiveness been measured?

b. On what issues has your agency considered approaching tribes as contributors to or as partners in Indian education reform and improvement? Has your agency ever given or considered giving tribes the final decision-making authority on Indian education program applications, plans, or operations?

c. Which of the tribes that you work with submit comments or testimony on education plans, policies, laws, regulations, or changes from your agency?

d. Which of the tribes have tribal education departments? Education directors?

e. Which of the tribes have education codes?

f. Which of the tribes use their education committee or their education department director to relate to schools and other education programs on the reservation or in the Native community?

g. What agreements or waivers has your agency made that would enable tribes to carry out their own education monitoring or assessment such as in program evaluation, accreditation, or teacher certification?

8. **Tribal Resources**

What are the financial, human, and technical resources that the tribes have for education improvement? For examples, tribal council budgets for scholarships or other education programs, committees or networks for education, tribal college or other post-secondary institution that assists the tribe with education programs.

9. **Indian Education in the State**

a. Does the state have an Indian education office, program, commission, or council?

b. Are there any specific state laws, policies, or programs regarding Indian education?

c. What tribes have provided input into the laws, policies, or programs that affect Indian education?

d. Does the state publish regular education reports? Which of those reports include Indian education issues or Indian student academic performance?

10. **Indian Education in State Public School Districts**

a. What percent of the school districts' student enrollment is from tribes?

b. What percent of the school districts' staff are Native American?

c. What percent of the school board are tribal members?

d. What regular interaction do the tribes have now with the school districts? For examples, participate in holiday programs or extra-curricular activities, meet with district officials on education issues, organize voting campaigns to elect tribal members to school boards, review and sign-off on the Impact Aid application, coordinate with the home/school liaison staff, provide elders or artists or other tribal members to help in classes.

e. What public school policies and programs focus on Indian students or on Indian education issues (positive or negative)?

f. Which districts publish regular education reports and which of these reports include Indian education issues or Indian student academic performance?

g. If there is little interaction between the tribes and the public school districts, what are the main reasons that there is little coordination?

11. **Federal Programs and Tribal Control of Indian Education**

a. Within your agency's responsibilities, what are the federal programs that tribes administer or operate? What are the programs that require tribal comment, involvement, or signature?

b. Within your agency's responsibilities, what problems would you foresee in making Indian education program grants directly to tribes as part of a block grant or set-aside after making an eligibility/capability determination?

c. What legislation or policies has your agency considered that would confirm and actively support direct tribal control over all education systems that serve Indian children and that direct federal agencies and states to acknowledge the primacy of tribes in the education of tribal members in the same way this primacy is recognized through the Indian Child Welfare Act of 1978?

d. What is a workable process for the authorization of tribal education block grants that consolidate existing federal education funding for programs that serve tribal members (*e.g.*, Impact Aid, Head Start, Child Development, Chapter 1, Johnson-O'Malley, Title V, Bilingual Education, Vocational Education, Adult Education, Adult Vocational Training and Higher Education scholarships)?

e. What is a workable process for funding tribal education departments through the authorizations contained in the Indian Education Act of 1988? The Act authorizes funding for tribal education departments but, to date, no money has ever been appropriated for such departments.

f. What is a workable process for authorizing tribes to have meaningful input and final decision-making authority in the education programs that benefit Indian children, perhaps through a verified eligibility process? What problems would you see in treating tribes as equals to states in federal education legislation that affects tribal members?

NOTES

THE NATIVE AMERICAN RIGHTS FUND

INDIAN EDUCATION LEGAL SUPPORT PROJECT

Presentation/Workshop Materials

INDIAN EDUCATION PROBLEMS AND TRIBAL GOVERNMENT SOLUTIONS - EXAMPLES

Introduction

Tribes must be prepared for taking responsibilities in Indian education and must have goals, their vision of what local Indian education should be. The following short descriptions may help stimulate everyday idea[illegible]f what could be, based on what other tribes have already done. These descriptions may help tribal councils and policy makers to see some practical possibilities, some options that may have been overlooked so far.

Examples

1. **The Problem** - "Everyone knew" that education was failing for too many Indian children on the reservation. "Everyone knew" that attendance was low, grade averages were low, and that kids scored far below state and national averages on tests. But there was no documentation of what "everyone knew". None of the schools documented attendance rates, dropout rates, report card averages, or grade level averages of standard test scores. And the state didn't organize its Annual Education Report so that school districts could be compared.

   The Solution - The tribe's Education Department saw monitoring and reporting Indian student performance as a tribal government responsibility. The Education Director went to the Tribal Council and presented the plan and budget for writing an annual State of Reservation Education report. The report was designed, data forms were sent to each school district, and the Education Director went to each district Superintendent to request information and offer to help with the first year. Most districts cooperated, a few didn't.

   The SRE report was developed, 500 copies were printed, and copies were given to each Council member and district Superintendent. The report confirmed and documented what "everyone knew" about dropout and attendance rates, report card and test score averages. The report documented and used those statistics as baselines, as starting points for addressing and improving reservation education.

   The State of Reservation Education report is now annually published and copies are requested by agencies from both on and off the reservation. All districts now submit data, and without multiple reminders from the Education Department. The SRE statistics are reported annually to the Tribal Council, baseline improvements are tracked, and the

Education Director makes annual recommendations to the Council based on the report findings.

2. **The Problem** - Many tribal parents knew that their children were having school problems and felt that the same problems were continuing from one year to the next. These were the "quiet children," the ones that caused no problems and whose own difficulties were often not noticed. Tribal Education Department staff talked to the parents and recognized what was wrong but had no data to use when they approached the schools. Tribal staff and parents needed data on the children's classes, grades, and attendance data to use in backing up their assessment of the problems.

   The Solution - The Tribal Education Department staff developed a student data system and put the system on the Department's computer. Staff explained the system to the Tribal Council and gained their approval since the children were the tribe's ultimate resource. Staff explained the system and its planned use to parents and gained permission to include their children in the data base. The system included each tribal child's name, grade level, and data on his or her current school program and performance.

   Now when parents and schools come to the Department for help, tribal staff have reference data available to explain what is needed to parents and schools. Parents and tribal staff now have hard data to back-up their positions when they approach the school districts. Parents, tribal staff, and the districts now work together to develop solutions for these "quiet children" and work together to watch for progress in school, both through the school's records and on the tribe's system.

3. **The Problem** - Tribal secondary students were ditching classes and leaving school or simply not showing up. Tribal officials said school staff weren't trying to stop the kids. Public school officials said that tribal police didn't try to enforce laws and that tribal courts weren't convicting the kids or families that were caught. Most of the families involved had some bad problems. The kids recognized the "gaps" and kept ditching.

   The Solution - The tribe's Education Director called a meeting of public school officials, tribal police and judges, the tribal social worker, tribal council members, and concerned parents. The Education Director focused the meeting on issues and finger-pointing was avoided. The Education Director pointed out the tribal code sections and school policies that were violated and the need for all attendees to find a solution. A coordinated strategy was developed to inform tribal police as soon as kids were missing, find and arraign the kids, meet with the families, get tough in court, and create education alternatives in the school. The plan was implemented, kids ditched, kids were caught, laws and policies were enforced, kids recognized the changes, and the tribe's latest annual report now documents higher attendance and lower truancy.